

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Maria Simeone	Team: Team # 6	CCRB Case #: 200515157	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 12/20/2005 5:05 PM	Location of Incident: 761 East 182nd Street	Precinct: 48	18 Mo. SOL 6/20/2007	EO SOL 6/20/2007	
Date/Time CV Reported Tue, 12/20/2005 8:32 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Tue, 12/20/2005 8:32 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Flavio Rodriguez	10371	924407	048 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM John Walker	30023	919842	F S D
2. SGT Sean Lynskey	04166	901871	PSA 5
3. LT Kevin Colon	00000	915477	034 PCT
4. SGT Sidney Centeno	01894	905933	I.A.B.

Officer(s)	Allegation	Investigator Recommendation
A.POM Flavio Rodriguez	Abuse: Officer Flavio Rodriguez searched § 87(2)(b) [REDACTED]	
B.POM Flavio Rodriguez	Force: Officer Flavio Rodriguez used physical force against § 87(2)(b) [REDACTED]	
C.POM Flavio Rodriguez	Abuse: Officer Flavio Rodriguez strip-searched § 87(2)(b) [REDACTED]	

Synopsis

On December 20, 2005, § 87(2)(b) went to Brothers Food Market located at 761 East 182nd Street in the Bronx to purchase a sandwich where § 87(2)(b) got into an argument with a store clerk over whether § 87(2)(b) had paid. The store clerk called 911 and Officer Flavio Rodriguez and an unidentified Hispanic male officer responded to the location. § 87(2)(b) alleged that PO Rodriguez approached him and without identifying himself as an officer instructed § 87(2)(b) to remove his hands from his pockets. PO Rodriguez then went into § 87(2)(b)'s two jacket pockets, two sweatshirt pockets and four pant pockets (Allegation A). § 87(2)(b) protested the search at which time PO Rodriguez grabbed § 87(2)(b) by the left shoulder area of his sweatshirt and pulled him outside of the store (Allegation B), searched him a second time and handcuffed him. § 87(2)(b) was brought to the 48th Precinct and strip-searched in a bathroom (Allegation C) and then issued a summons for § 87(2)(b).

§ 87(2)(g)

Summary of Complaint

CCRB Complaint Response Unit

On December 20, 2005, § 87(2)(b) filed a complaint with the CCRB via the call processing system (Enc. 3A-B). § 87(2)(b) claimed that on December 20, 2005, he went to Brothers Food Market located at 761 East 182nd Street in the Bronx. Two officers in plainclothes driving an unmarked car from the 48th Precinct entered the store. The officers told § 87(2)(b) to take his hands out of his pockets. They did not identify themselves as police officers or display their shields. PO1 went into § 87(2)(b)'s pockets, grabbed him and forcibly removed him from the store and handcuffed him. Additional units arrived and § 87(2)(b) was taken to the 48th Precinct. § 87(2)(b) was taken into a bathroom and strip-searched after his pedigree information was entered. § 87(2)(b) was then placed inside of a cell and he was notified that he was going to be arrested for disorderly conduct and was issued a summons for December 21, 2005. § 87(2)(b) stated that the subject officer was a Hispanic male 5'8" tall and dressed in plain clothes. § 87(2)(b) identified the subject officers as being an "NSP detective" tax # 92445. § 87(2)(b) had swelling to his wrists from the handcuffs but did not seek medical attention.

§ 87(2)(b) CCRB Statement

§ 87(2)(b) testified at the CCRB on January 24, 2006 (Enc. 4A-D). On December 20, 2005, he left his job working for the § 87(2)(b) on § 87(2)(b) and § 87(2)(b) at 3:30 p.m. and walked towards 182nd Avenue in the Bronx to go to a friend's house located on § 87(2)(b) and § 87(2)(b). § 87(2)(b) first stopped at a grocery store located at 761 East 182nd Street to buy a sandwich. He ordered his sandwich and paid with a \$20 bill. An Arabic man, about 5'8" tall 195-200 pounds dressed in a white shirt, went to the deli section of the store to make the sandwich and when he returned he told § 87(2)(b) that he did not pay. § 87(2)(b) said that he had paid and asked for his change. The man started "bickering" about if § 87(2)(b) had paid. § 87(2)(b) asked to speak to the manager. The man told him the manager was not there and § 87(2)(b) asked the man to call the manager. § 87(2)(b) believed that the man called the police instead. § 87(2)(b) was standing in the store patiently, when 15 minutes later two men walked up to him and told him to get his hands out of his pockets. The men did not identify themselves as being police officers. § 87(2)(b) described both men as being Hispanic and dressed in plain clothes. PO1 was wearing a black army fatigue jacket and could not recall what PO2 had been wearing. PO1, identified by the investigation as PO Flavio Rodriguez, stood in front of § 87(2)(b) put his hands in all of § 87(2)(b)'s pockets; he had been wearing a jacket with two side pockets, a sweatshirt with two side pockets and jeans with two front and two back pockets. PO2 stood near them and had been looking the other way the entire time. § 87(2)(b) told PO Rodriguez that he cannot put his hands inside of his pockets, and placed his arms in a defensive position around his body so that PO Rodriguez could not go inside of his pockets. § 87(2)(b) told the men, who he now understood to be officers, that they were not permitted by law to search him without identifying themselves. The men told him that he knows a lot about the law and § 87(2)(b) informed them that his § 87(2)(b) § 87(2)(b) § 87(2)(b) is a police officer. PO Rodriguez used his right hand to grab § 87(2)(b) by the left shoulder area of his sweatshirt and pulled him outside of the store, about 5 feet to the left of the door, which was approximately 20 feet away. PO2 led them outside.

Outside of the store, PO Rodriguez searched § 87(2)(b)'s pockets a second time and took out his identification. § 87(2)(b) asked what he was doing and why and that he was just there to get his change and his sandwich. PO 2 told him that he was talking too much. PO Rodriguez grabbed § 87(2)(b)'s right hand and twisted it to bring the hand behind § 87(2)(b)'s back and handcuff him. PO Rodriguez told him he was being arrested for disorderly conduct. § 87(2)(b) just stood there and allowed PO Rodriguez to handcuff him and place him in the back seat of a black unmarked Crown Victoria. PO2 drove the vehicle to the 48th Precinct and PO Rodriguez sat in the passenger seat.

PO Rodriguez and PO2 escorted § 87(2)(b) into the precinct. PO Rodriguez placed § 87(2)(b) inside of the holding cell, where there was already a Hispanic man. After about 5 minutes, PO Rodriguez returned to the holding cell and informed § 87(2)(b) that he was taking him into the bathroom to strip search him. § 87(2)(b) told PO Rodriguez that he could not strip-search him because he was not being charged with a felony and that he wanted to talk to PO Rodriguez's supervisor. PO Rodriguez told § 87(2)(b) that he knows too much and that his supervisor did not want to talk to him. § 87(2)(b) told him that he was going to file charges against him and PO Rodriguez said "you do what you gotta do." PO Rodriguez took § 87(2)(b) to the bathroom and told him to remove his jacket and shirt, because he looked too "bulky". § 87(2)(b) stated that he works outside all day and he has to layer his clothing to keep warm in the winter and that was why he was wearing so many particles of clothing. PO Rodriguez told § 87(2)(b) to take off all of his clothing, one piece at a time, until § 87(2)(b) was completely naked. PO Rodriguez instructed § 87(2)(b) to squat. § 87(2)(b) asked what PO Rodriguez was looking for. PO Rodriguez then went to check if § 87(2)(b) had any open warrants, which he did not. PO Rodriguez issued § 87(2)(b) a summons for § 87(2)(b) and told him to leave. § 87(2)(b) again asked to speak to a supervisor and was denied. § 87(2)(b) was given back his identification and left to go home.

On § 87(2)(b) § 87(2)(b) experienced finger numbness to his right pinky and ring fingers. He went to § 87(2)(b) and was treated for two dislocated fingers. [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Results of Investigation

Canvass and Witness Statements

On April 28, 2006, a canvass was conducted at Brother's Food Market located at 761 East 182nd Street in the Bronx (Enc. 5A). The investigator spoke with § 87(2)(b) who stated that there was an incident involving a black man being disorderly inside of the store, but did not know details. § 87(2)(b) was questioned but due to a language barrier was unable to understand the investigator. § 87(2)(b) called the manager § 87(2)(b) who came to the store and spoke with § 87(2)(b) in Arabic and clarified what the investigator needed to know. § 87(2)(b) stated that on the incident date he and his cousin had been working when a black man, identified through the investigation as § 87(2)(b) came in to the store in the afternoon and stated that he had bought a sandwich in the morning and paid with a \$20 bill and was not given any change. § 87(2)(b) stated that he did not know what § 87(2)(b) was talking about since he had not been working that morning and therefore could not give him the money back. § 87(2)(b) began screaming and making a scene in the store, so § 87(2)(b) called 911.

Two police officers arrived and entered the store and asked § 87(2)(b) to exit and speak with them. § 87(2)(b) walked out willingly with the officers and they talked for 2-3 minutes in front of the store. § 87(2)(b) never saw the officers frisk or search the man inside of the store or if he was handcuffed. After talking to the officers § 87(2)(b) walked away and § 87(2)(b) saw him turn right onto Prospect. The officers re-entered the store and told § 87(2)(b) to call them if they had any more problems with § 87(2)(b). § 87(2)(b) returned 2 days later and caused another scene, at which time § 87(2)(b) called the police since he knew about the first incident but did not recall any details about what happened between the officers and § 87(2)(b).

PO Flavio Rodriguez: Subject Officer

Officer Flavio Rodriguez testified at the CCRB on May 30, 2006 (Enc. 6A-D). PO Rodriguez is a § 87(2)(b) old 5'6" tall, 160pound pound Hispanic male. On December 20, 2005, PO Rodriguez worked 2:00 p.m. to

11:35 p.m. as a conditions officer in the 48th precinct. PO Rodriguez was dressed in plainclothes, assigned an unmarked vehicle and could not recall with whom he was working. PO Rodriguez stated that he rotated partners and could have been working with PO John Walker, PO Sean Lynskey, PO Janine McDowell and PO Conrad but that it was most likely PO John Walker and Det. Sean Lynskey. PO Rodriguez did not initially recall the incident until given further details by the investigator.

On December 20, 2005, PO Rodriguez was notified of a 911 call from Brother's Food Market located on 761 East 182nd Street that there was a disorderly man inside. PO Rodriguez responded to the location and parked on the street in front of the store. Brother's Food Market is a small establishment. Upon entering the store the counter to pay is directly in front and the store extends to the left. PO Rodriguez entered the store and approached a male employee behind the counter and asked if he had called 911. The man responded that he had and pointed out a black man standing nearby. The store employee told PO Rodriguez that the man, identified through the investigation as § 87(2)(b) was causing a commotion and disturbing the other customers. PO Rodriguez could not recall how many additional civilians were present. PO Rodriguez went up to § 87(2)(b) verbally identifying himself as a police officer and displaying his shield, and informed him that a 911 complaint had been made stating that he was being disorderly. PO Rodriguez never frisked or searched § 87(2)(b)'s pockets. § 87(2)(b) was argumentative and did not want to leave. PO Rodriguez only made physical contact with § 87(2)(b) when he placed a hand on § 87(2)(b)'s arm and on § 87(2)(b)'s lower back to guide him outside. § 87(2)(b) did not resist and walked outside with PO Rodriguez and his partner. PO Rodriguez explained to § 87(2)(b) that he had to leave the location and that the storeowner did not want him there because his screaming was causing a scene. PO Rodriguez never entered § 87(2)(b)'s pocket to remove his identification and could not recall if he had ever even asked for it. § 87(2)(b) was never handcuffed or brought to the precinct. PO Rodriguez could not recall if § 87(2)(b) had been issued a summons but stated that if he had it would have been denoted in his memo book and summons card which it was not. PO Rodriguez never instructed § 87(2)(b) to remove his jacket stating that he "looked too bulky." PO Rodriguez never instructed § 87(2)(b) to remove any of his clothing. PO Rodriguez did not recall ever encountering § 87(2)(b) in the precinct. PO Rodriguez did not strip search § 87(2)(b). PO Rodriguez did not know which direction § 87(2)(b) left in. PO Rodriguez and his partner left in the patrol vehicle.

PO John Walker: CCRB Statement

Officer John Walker testified at the CCRB on August 22, 2006 (Enc. 7A-D). PO Walker is a 6'3" tall, 210 pound white male with brown hair and brown eyes. PO Walker did not bring his memo book, which was at the 48th Precinct station house, and he has since been transferred to the Firearms Suppression Unit. On December 20, 2005, PO Walker was assigned to Anti-Crime and partnered with Det. Sean Lynskey. PO Flavio Rodriguez did work with PO Walker and Det. Lynskey on occasion but PO Walker did not recall if he had been on the date in question. PO Walker was dressed in uniform. PO Walker was assigned a patrol vehicle, however, could not recall if it was marked or unmarked. PO Walker stated that he had reviewed his memo book entries prior to appearing at the CCRB and there were no entries regarding the incident. PO Walker stated that officers assigned to Anti-Crime do not respond to radio calls unless an officer is requesting assistance. PO Walker did not recall ever responding to the location and stated that he had been patrolling the entire confines of the precinct. PO Walker did not recall any individual by the name of the complainant and stated that he would have recalled his name since it is unusual. PO Walker stated that had a frisk and search been conducted or arrest made either he or his partners would have filled out the proper paperwork and he would have denoted it in his memo book.

Lieutenant Kevin Colon: CCRB Statement

Lt. Colon testified at the CCRB on February 2, 2007 (Enc. 8A-D). On December 20, 2005, he was assigned to transit strike detail with PO Plinkus and Lt. Cody. He was interviewed because it was believed that he was the desk sergeant, however, stated that Sergeant Syndey Centeno had been the desk officer that day and he had been on patrol. He had no interaction with § 87(2)(b) or knowledge of the incident.

Medical Records

In his official testimony § 87(2)(b) stated that he sought medical attention at § 87(2)(b) in the Bronx on § 87(2)(b) following the incident. On March 6, 2006 § 87(2)(b)'s medical records were

subpoenaed the results of which were received on May 2, 2006, as unable to locate any information for § 87(2)(b) (Enc. 9A).

Police Documentation

The 48th Precinct Roll Call lists PO Rodriguez as assigned to a transit strike post and PO Walker and PO Lyskey assigned to anti-crime. It does not identify PO Rodriguez's partner (enc. 12A-F).

The Command Log Entry denotes that PO Rodriguez brought § 87(2)(b) to the station house as an arrest and released with a summons for disorderly conduct. There was no note indicating that § 87(2)(b) was strip-searched (Enc. 13A).

There was no stop and frisk report listed for § 87(2)(b) on the stop and frisk log (Enc. 13B-C).

The SPRINT states that at 4:52 p.m., 4:53 p.m. and 5:00 p.m. a male caller named § 87(2) called 911 and reported that there was a black male at Brother Food Market causing a disturbance. At 5:01 p.m. a sector responded to the location and at 5:37 p.m. one person was placed under arrest (Enc. 11A).

An MISD check for § 87(2)(b) did not yield any results (Enc. 14A-C).

Criminal Conviction History

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Conclusions and Recommendations

Identification of Officers

§ 87(2)(b) alleged that two male Hispanic officers stopped him inside of Brother's Food Market on (December) 20, 2005. PO Flavio Rodriguez was identified by the summons he issued to § 87(2)(b) and the command log entry which stated that PO Rodriguez brought § 87(2)(b) to the station house as an arrest. PO Rodriguez recalled being one of the officers to respond to the location and interact with § 87(2)(b) however, could not recall his partner on that date and stated that it could have been PO Walker, Det. Lynski, PO McDowell or PO Conrad. PO Walker was interviewed and stated that he was partnered with Det. Lynskey on the date in question and Det. Lynski did not have any entries in his memo book denoting the incident. Furthermore, PO Walker and Det. Lynskey are both white men with fair complexions and did not match § 87(2)(b)'s physical description of the second officer and PO McDowell is a white female. CTS does not list any officers named "Conrad" assigned to the NYPD and the 48th Precinct Roll Call does not list any officer with a similar name assigned that day. Furthermore, the incident occurred on the first day of

the New York City Transit strike and there were over 25 Hispanic male officers assigned that day to details including transit strike. § 87(2)(g) .

Undisputed and Disputed Facts

It is undisputed that someone called 911, officers responded and interacted with § 87(2)(b) § 87(2)(g) .
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

Assessment of Evidence

It is clear that an incident had occurred between § 87(2)(b) and a store employee disputing whether § 87(2)(b) had paid for his sandwich. § 87(2)(b)'s behavior prompted someone to call 911 and two officers respond to the location. § 87(2)(g) § 87(2)(g) .
§ 87(2)(b) alleged that the two officers, who were in plainclothes and did not identify themselves, approached him and PO Rodriguez immediately placed his hands inside of § 87(2)(b)'s pockets searching him. § 87(2)(g) § 87(2)(g) .
§ 87(2)(b) claimed that after PO Rodriguez searched his pockets he grabbed him and pulled him out of the store, where PO Rodriguez searched § 87(2)(b) a second time during which time he removed § 87(2)(b)'s identification from his pocket. PO Rodriguez handcuffed § 87(2)(b) and he and PO 2 took § 87(2)(b) to the 48th Precinct as an arrest, which the command log corroborates. § 87(2)(b) alleged that PO Rodriguez then took him into a bathroom and strip searched him. § 87(2)(b) was ultimately released with a summons for § 87(2)(b) .

PO Rodriguez, however, denied all of § 87(2)(b)'s allegations § 87(2)(g) § 87(2)(g) . He stated that upon entering the store he and his partner, whose identity he could not recall, identified themselves as police officers. He stated that he never frisked or searched § 87(2)(b) and that the only time he ever touched him was when he gently placed one hand on § 87(2)(b)'s back and one on § 87(2)(b)'s arm to guide him out of the store, and § 87(2)(b) was compliant. Once outside of the store, PO Rodriguez told § 87(2)(b) that he had to leave. PO Rodriguez left with his partner in their patrol vehicle while § 87(2)(b) walked away. PO Rodriguez denied that § 87(2)(b) was ever handcuffed, taken to the station house or strip searched. There was no notation in the command log indicating that a strip search had been conducted. He stated that he had no recollection of issuing § 87(2)(b) a summons, but that if he had it would have been denoted in his memo book, which it was not.

§ 87(2)(b) claimed he sustained two dislocated fingers as a result of the way PO Rodriguez handcuffed him and sought medical attention at § 87(2)(b) . However, § 87(2)(b) did not have any medical records documenting his treatment, § 87(2)(g) .
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PO Rodriguez failed to recall with whom he was working that day and denied transporting § 87(2)(b) to the station house. § 87(2)(g) .
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§ 87(2)(g) [Redacted]
[Redacted]

[Redacted]
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[Redacted] BADS did not list § 87(2)(b) as one of PO Rodriguez's numerous arrests.

Allegation A: Officer Flavio Rodriguez searched § 87(2)(b)

Allegation B: Officer Flavio Rodriguez used physical force against § 87(2)(b)

Allegation C: Officer Flavio Rodriguez strip-searched § 87(2)(b)

§ 87(2)(g) [Redacted]
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Investigator:	Date:
Supervisor:	Date:
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